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American  
Cotton  
Shippers  
Association

July 27, 2006

Eileen Donovan  
Acting Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW,  
Washington, DC 20581

COMMENT

OFF. OF THE SECRETARIAT

2006 JUL 31 PM 12: 56

RECEIVED  
C.F.T.C.

Re: 17 CFR Part 38  
Conflicts of Interest in Self-Regulation  
& Self Regulatory Organizations

Dear Madame Secretary:

Pursuant to the Federal Register notice of July 7, 2006,<sup>1</sup> the American Cotton Shippers Association (ACSA) submits these comments in opposition to the revised Core Principle 15 recommendation that "at least fifty percent of the board members of exchange's boards of directors and executive committees (or similarly empowered bodies) be 'public directors.'"

Received CFTC  
Records Section  
7/31/06

#### Interest of ACSA

ACSA was founded in 1924 and is composed of primary buyers, mill service agents, merchants, shippers, exporters and importers of raw cotton who are members of four federated associations located in seventeen states throughout the cotton belt:

Atlantic Cotton Association (AL, FL, GA, NC, SC, & VA)  
Southern Cotton Association (AR, LA, MS, MO, & TN)  
Texas Cotton Association (KS, OK & TX)  
Western Cotton Shippers Association (AZ, CA, & NM)

ACSA member firms handle a substantial portion of the U.S. cotton sold in the domestic market as well as the bulk of the trade in the export market. The 2005-06 record crop of 24 million bales will be utilized in part by our domestic mills, who will consume 5.6 million bales, while 16.8 million bales will be shipped to foreign mills. Because of their involvement in the purchase, storage, sale, and shipment of cotton, ACSA members, along with their producer and mill customers, are significant users of the New York Board of Trade's (NYBOT) No. 2 Futures and Options Contracts to hedge their spot and forward sales and purchases. Therefore, they are vitally interested in maintaining an orderly futures market environment and their interest is manifest in expressing opposition

<sup>1</sup> Fed. Reg., Vol. 71, No. 130, at pages 38740-51.

to the Commission's proposal since it could significantly impact their voice and those of their producer, domestic mill, and export customers in the governance of the NYBOT's business operations

### **The CFTC Proposal Is Excessive & Unnecessary Regulation**

The Commission's fifty percent public directors proposal assumes that the current management and governance structures of the commodity exchanges are in conflict with existing law and do not serve the interest of those utilizing the futures and options contracts traded on such exchanges or the consuming public at large. Simply put, the Commission presumes the system is broke and must be fixed, when in fact the exchanges are well managed, constantly updating their governance structures, and have demonstrated an overall commitment to execute trades in a transparent and efficient manner in highly competitive and ever-expanding markets.

Commissioner Hatfield raised the dispositive question in his statement, asking, "have the exchanges produced self-regulatory structures that are up to the challenges of the changing marketplace and if not, are we as regulators suggesting a better model?"

As stated above, the exchanges have met these challenges. Further, the regulatory model proposed by the Commission is an arbitrary and unnecessary requirement. It is regulatory overreaching, which would encumber the exchanges with governance requirements that could stifle the vital day-to-day market functions on which those who use the contracts to hedge their business operations rely on for instant price discovery and the execution of their orders.

### **Proposal Will Dilute Trade, Commodity, & Farmer Representation**

Adding a substantial number of public directors to an exchange's board of directors will have the effect of diluting the current minority voices of trade, commodity, and farmer interest in exchange governance. This would be the result if exchange boards are significantly expanded or remain the same size. In the case of cotton, the NYBOT provides each of the commodities represented on its board with one representative. Cotton's limited interest, influence, and its voice in exchange matters would be further reduced under the Commission's proposal.

There are no questions regarding the integrity of the NYBOT's governance and if there were, ACSA and/or its individual members would certainly bring such matters to the immediate attention of the Commission and/or its staff. Lacking such problems, how would the NYBOT's current unblemished level of market integrity be improved through an increase in its current twenty percent public representation on its board to fifty percent? We conclude, there would no improvement, if the current public directors and those associated with the floor traders, commission houses, and commodity interest continue to perform at their current outstanding levels.

Further, the proposal is totally incompatible with maintaining the good governance objectives of maintaining diversity of board membership and assuring adequate

representation of the agricultural commodities and financial instruments traded on the various commodity exchanges.

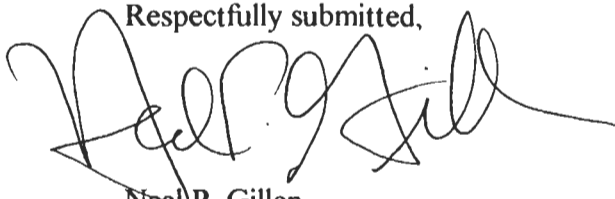
We submit that:

- The NYBOT is fully compliant with the Commission's current governance requirements, which are working effectively.
- There is no need to change what's working well in the interest of all concerned.
- There is no demonstrated or perceived need for a change in the current regulatory structure.

In conclusion, ACSA shares the concerns expressed by Commissioner Hatfield "that the Board composition proposal also would create an additional and perhaps unnecessary layer of regulation for publicly traded exchanges, which are already subject to myriad new and enhanced corporate governance requirements, including among others, Securities and Exchange Commission registration."

Therefore, we urge the Commission to either rescind or reconsider its proposal. Further, we recommend that the Commission grant the individual exchanges who are in compliance with the current Commission requirements for public representation an exemption from any future increase in public representation if, as is the case with the NYBOT, their existing structure has resulted in achieving and maintaining the necessary market integrity required by the Commodity Exchange Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Neal P. Gillen", with a long horizontal flourish extending to the right.

Neal P. Gillen,  
Executive Vice President &  
General Counsel